IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Hartman Plastics, Inc., Plaintiff, v. Star International LTD-USA, Defendant.	:	CIVIL ACTION NO. 97-CV-2679
Star International LTD-USA, Plaintiff, v. Hartman Plastics, Inc., Defendant.	:	CIVIL ACTION NO. 97-CV-2734

McGlynn, J. **September , 1998**

MEMORANDUM OF DECISION

Before the court is Star International LTD-USA's ("Star") post-trial motion to alter or amend the judgment, or alternatively, for a new trial on damages. Hartman Plastics, Inc. ("Hartman") opposes the motion. For the following reasons, Star's motion will be denied.

I. BACKGROUND

Hartman is a manufacturer of foamboard located in Chester County, Pennsylvania. Star was Hartman's exclusive distributor of foamboard in the Middle East. This dispute arises from a written Settlement Agreement, General Release, and Distribution Agreement ("the Agreement") reached between the parties on August 12, 1996. The Agreement made Star the exclusive distributor of

Hartman foamboard in the Middle East for three and a half years. In that interval, Star had to order a specific number of Hartman foamboard containers during a series of four specified time periods, beginning with a minimum of ten containers between August 15, 1996 and April 14, 1997.

On April 9 or 10, 1997, Star placed an order for the minimum ten containers, its only order in the first period. Hartman refused to fill the order on the belief that it was not genuine and Star would be unable to pay for the ten containers. Hartman then filed suit against Star claiming fraud in the inducement of the Agreement and breach of contract. Star counterclaimed against Hartman alleging breach of contract for refusing to fill the order.

A trial was held from May 11 to 13, 1998, in which Hartman sought to prove that it was entitled to refuse performance of the Agreement and Star sought damages for lost profits on the sale of foamboard for the entire three-and-a-half year Agreement term. A jury returned a verdict by way of special interrogatories, finding: (1) Hartman was not entitled to refuse performance of the Agreement on the ground of fraudulent inducement; (2) Hartman was not entitled to refuse performance of the Agreement on the grounds that Star failed to exert its best efforts or act in good faith in performing its part of the agreement; (3) Hartman breached the Agreement with Star; and (4) Star should be awarded

$10,000 in damages for breach of the Agreement.

On May 14, 1998, the court molded the jury's verdict and entered a civil judgment in favor of Star and against Hartman in Civil Action No. 96-CV-2679, and in favor of Star and against Hartman in the amount of $10,000 in Civil Action No. 97-CV-2734.

II. DISCUSSION

Star seeks to alter or amend the judgment to enjoin Hartman from refusing to honor the Agreement and to order that the end of the term of the Agreement be extended from February 15, 2000 to March 15, 2001. If Star is not awarded that injunctive relief, it asks for a new trial on damages because the $10,000 jury award was grossly insufficient and against the weight of the evidence.

A. Injunctive Relief for Star

Star brings its motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). A Rule 59(e) motion is appropriate "if the court in the original judgment failed to give relief on a certain claim on which it has found that the party is entitled to relief." 11 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2810.1 (1995). However, "[t]he Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment." Id. The grant of a Rule 59(e) motion rests within the sound discretion of the trial court. Kiewit Eastern Co., Inc. v. L & R Const. Co., Inc., 44

F.3d 1194, 1204 (3d Cir. 1995).

A motion to alter or amend a judgment must be based on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct clear error of law or prevent manifest injustice. North River Ins. Co. v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995). Star has not asserted a change in law, the discovery of new evidence, or a clear error of law. The court therefore presumes Star's motion is intended to prevent manifest injustice.

1. Adequacy of Star's Remedy at Law

Star essentially seeks specific performance of the Agreement to continue as Hartman's exclusive distributor in the Middle East until March 15, 2001. It argues that its legal claims were properly submitted to the jury, but that the court must now determine its claims for equitable relief.[1] Despite the fact that the Agreement made Star Hartman's exclusive distributor in the Middle East until February 15, 2000, argues Star, the jury only awarded $10,000 in damages. "Clearly, the jury did not intend this award to reflect Star's lost profits on sales throughout the remaining term of the Agreement. Rather, the jury

[1] In both its complaint and counterclaim, Star requested a permanent injunction to prevent Hartman from refusing to fill Star's orders and from violating the terms of the Settlement Agreement. See Star Mot. to Alter or Amend J. at 2.

obviously followed the Court's instruction that it should award damages for future lost profits only if they could be calculated with reasonable certainty." Star Mem. of Law at 5-6. Star claims that it is entitled to equitable relief because the jury's verdict of $10,000 shows that Star has no adequate remedy at law.

Hartman responds that Star has already obtained an adequate legal remedy, and that "Star has maintained the adequacy of its legal remedy throughout this case." Hartman Mem. of Law at 8. It points out: (1) Star argued that its damages were not speculative in its opposition brief to Hartman's motion for partial summary judgment on count I of Star's complaint, see Hartman Mem. of Law, Ex. E at 10, and (2) Star presented evidence of its monetary loss at trial and received an award from the jury.

To obtain a permanent injunction, a plaintiff must prove he or she lacks an adequate remedy at law. International Union, UAW v. Mack Trucks Inc., 820 F.2d 91, 95 (3d Cir. 1987). "Where courts of law cannot afford an adequate or commensurate remedy in damages," then legal remedies are inadequate. 11A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2942 (1995).[2] On May 27, 1997, the court denied Star's request for a

[2] See also Bowen v. Massachusetts, 487 U.S. 879, 925 (1988) (Scalia, J., dissenting) (adequate remedy exists and "specific relief will be denied when damages are available and are sufficient to make the plaintiff whole").

preliminary injunction which would have forced Hartman to sell foamboard to Star, expressly finding that Star had an adequate remedy at law. Notwithstanding the jury's $10,000 verdict, the court still believes Star received an adequate legal remedy at trial in the form of damages.

Star interprets the $10,000 award to mean that the jury believed calculating damages over the entire life of the Agreement would be speculative. That interpretation is unwarranted. At trial, Star presented proof of its damages for lost profits over the entire life of the Agreement. See May 12, 1998 Trial Tr., 2 PM Session at 62-63. During the Agreement period, Star was required to order a minimum of 66 containers of foamboard. Star presented evidence that it made an average profit of $5000 per container. Id. at 62. Therefore, Star argued, at a minimum, it would have earned $300,000 over the life of the Agreement.[3] May 13, 1998 Trial Tr. at 148. Star also claimed that it would have sold 50 more than the minimum sales requirement, totaling 116 containers during the Agreement period.[4] In closing, Star argued that "[u]nder the projection that Mr. Hartman made, if Star had been doing a good job," it

[3] It appears that counsel for Star made a mathematical error in its argument. 66 containers, at $5,000 profit per container, amounts to $330,000.

[4] At $5,000 profit per container, Star's earnings would have been $580,000 for 116 containers.

could have sold 82 and a half containers during the Agreement term, resulting in lost profits of $412,500. Id. at 148-49.

The jury plainly rejected those arguments. The evidence showed that only two of Star's ten orders during the first period were firm, meaning the customer would pay for them at the time of sale. See May 12, 1998 Trial Tr., AM Session at 14-18, 22, 91, 95; see also May 12, 1998 Trial Tr., 2 PM Session at 21. The other eight were made on the understanding that the customer would only pay for the foamboard he actually sold. May 12, 1998 Trial Tr., AM Session at 22-23. In addition, Star's lack of success in marketing Hartman foamboard during the first period (see id. at 38-39, 80; May 11, 1998 Trial Tr. at 112) could well have convinced the jury that Star would have been unsuccessful in meeting the 66-container minimum sales requirement. In view of the evidence adduced at trial, the jury had a sufficient basis for awarding $10,000 in damages for the entire life of the Agreement.

In addition, Hartman is correct that Star did not establish the elements of equitable relief at trial. Star concedes that "[t]he granting of equitable relief is a matter for the Court, based on the findings rendered by the jury." Star Mem. of Law at 8. But the jury was never presented with a case for equitable relief, and did not render a verdict addressing the elements which support the issuance of a permanent injunction.

A prerequisite for permanent injunctive relief is a showing by the plaintiff that the court's exercise of equity jurisdiction is proper. Roe v. Operation Rescue, 919 F.2d 857, 867 n.8 (3d Cir. 1990). That is shown where: (1) the plaintiff has no adequate legal remedy; (2) the threatened injury is real, not imagined; and (3) no equitable defenses exist. Id.

In this case, Star has not shown it had no adequate legal remedy.[5] To determine the legal adequacy of damages in a breach of contract action, the court considers: "(a) the difficulty of proving damages with reasonable certainty, (b) the difficulty of procuring a suitable substitute performance by means of money awarded as damages, and (c) the likelihood that an award of damages could not be collected." Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800, 801-02 (3d Cir. 1989) (citing Restatement (Second) of Contracts § 360 (1981)).

The damage remedy was adequate for Star under the first criterion.[6] As noted above, Star presented the jury with clear methods for calculating the amount of its damages over the life of the Agreement. The jury's rejection of Star's calculations of

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[5] Hartman has also established that the equitable defense of election of remedies precludes post-trial injunctive relief for Star. See infra part II.A.2.

[6] Because there is no record evidence concerning the difficulty of obtaining suitable substitute performance by means of money damages, or the possibility that damages could not be collected, the court does not consider those factors in determining the adequacy of Star's legal remedy.

its financial injury is immaterial to whether those damages were provable with reasonable certainty. The amount of damages claimed by Star was provable. At trial, however, Star failed to convince the jury of its appropriateness.

2. Election of Remedies

Star's request for injunctive relief is also barred by the doctrine of election of remedies.

In Pennsylvania, "[a]n election of remedies includes the deliberate and knowing resort to one of two inconsistent paths to relief." West Middlesex Area Sch. Dist. v. Commonwealth, Pa. Labor Relations Bd., 423 A.2d 781, 783 (Pa. Commw. Ct. 1980). "[T]he adoption, by an unequivocal act, of one of two or more inconsistent remedial rights has the effect of precluding a resort to others." Wedgewood Diner, Inc. v. Good, 534 A.2d 537, 538 (Pa. Super. Ct. 1987) (quoting "Election: Rescission or Damages," 40 A.L.R. 4th 627, 630-31). "[T]o be inconsistent the remedies in question must be different means of adjudicating the same issues." West Middlesex Area Sch. Dist., 423 A.2d at 783-84. A party makes a conclusive election or remedies which will bar later resort to an inconsistent remedy when: (1) the party knows his rights, (2) has carried his case to a conclusion, and (3) has obtained a decision on the issues involved. Wedgewood Diner, 534 A.2d at 539 (citing 25 Am. Jur. 2d Election of Remedies § 19).

In this case, damages for the entire Agreement term and specific performance are merely different means of adjudicating the same issue, i.e., the affirmative relief due Star as a result of Hartman's breach of the Agreement. As such, they are inconsistent remedies.[7] See West Middlesex Area Sch. Dist., 423 A.2d at 783-84. Remedies are also inconsistent when "a double recovery would result." 25 Am. Jur. 2d Election of Remedies § 17 (1996); see also Myshko v. Galanti, 309 A.2d 729, 731-32 (Pa. 1973) (disallowing equity suit for recovery of business sold where seller had already brought action at law to recover full contract price for sale). The damage award Star received at trial covered Hartman's breach of the Agreement[8] after Star

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[7] Additionally, "[w]hile there is contrary authority, it has been held that an action for damages upon breach of contract and a suit for the specific performance of the contract are inconsistent remedies. Therefore, an action for damages for breach of contract may bar a later suit for specific performance of the same contract." 25 Am. Jur. 2d § 24 (1996). In its discussion of inconsistent remedies, the Restatement of Contracts takes the same view: "the remedy of specific performance or an injunction and that of damages for total breach of contract are inconsistent." Restatement (Second) of Contracts § 378 cmt. d (1981).

[8] The jury interrogatories included two questions dealing with Hartman's breach of the Agreement:

> 3. Do you find that Hartman Plastics, Inc., breached its agreement with Star International LTD-USA?
>
> 4. What amount of damages do you award to Star International LTD-USA for Hartman Plastics, Inc.'s breach of the Agreement?

requested damages for the entire contract period. Star's request for specific performance would therefore give it the full benefit of the Agreement for which it has already recovered damages -- a double recovery.

Star points to the Restatement (Second) of Contracts § 378, which describes the doctrine of election among remedies as requiring not only that the remedies be inconsistent, but that "the other party materially change[] his position in reliance on the manifestation" of the choice of remedy. Restatement (Second) of Contracts § 378 (1981). Because Hartman has not materially changed its position as a result of Star's decision to pursue damages, Star argues the election of remedies doctrine does not bar injunctive relief. This argument fails for the simple reason that Pennsylvania has not adopted the second prong of the Restatement rule requiring a material change of position. The Pennsylvania cases instead focus solely on the inconsistency of the remedies sought, and make no mention of material change in position as having any bearing on the election of remedies doctrine. See, e.g., Boyle v. Odell, 605 A.2d 1260, 1265 (Pa. Super. Ct. 1992); Smith v. Brink, 561 A.2d 1253, 1255 (Pa. Super. Ct. 1989); Wedgewood Diner, Inc. v. Good, 534 A.2d 537, 538 (Pa. Super. Ct. 1987); West Middlesex Area Sch. Dist. v. Commonwealth,

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Jury Interrogatories ¶¶ 3 & 4.

Pa. Labor Relations Bd., 423 A.2d 781, 783 (Pa. Commw. Ct. 1980).

As a result, Star's election to pursue damages for total breach of the Agreement bars post-trial injunctive relief.

B. New Trial on Damages

Star alternatively contends that the jury award was grossly insufficient and against the substantial weight of the evidence, necessitating a new trial on damages under Rule 59(a).[9]

A Rule 59(a) motion for a new trial is addressed to the sound discretion of the trial court. Wagner v. Pennsylvania R. Co., 282 F.2d 392 (3d Cir. 1960). In reviewing such a motion, the court must view the evidence in the light most favorable to the non-moving party. See Moyer v. SEPTA, Civ. A. No. 89-7836 1991 WL 111092, at *2 (E.D. Pa. June 17, 1991) (citing Russell v. Monongahela Railway Co., 159 F. Supp. 650, 655 (W.D. Pa.), aff'd, 262 F.2d 349 (3d Cir. 1958)). To constitute proper grounds for granting a new trial, an error, defect, or other act must affect the substantial rights of the parties. Fed. R. Civ. P. 61.

Star contends that a jury award of only $10,000 for total breach of the Agreement is clearly against the substantial weight of the evidence. New trials because the verdict was against the clear weight of the evidence "are proper only when the record

[9] Rule 59(a) allows the grant of a new trial "on all or part of the issues ... in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted at law in the courts of the United States." Fed. R. Civ. P. 59(a).

shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our conscience." Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991). Moreover, a new trial based on an inadequate verdict is appropriate "only if the proceedings have been tainted by appeals to prejudice or if the verdict, in light of the evidence, is so unreasonable that it would be unconscionable to permit it to stand". New Market Invest. Corp. v. Fireman's Fund Ins. Co., 774 F. Supp. 909, 917 (E.D. Pa. 1991) (quoting 11 Wright & Miller, Federal Practice & Procedure § 2807). Whether or not the trial judge agrees or disagrees with the jury's verdict, the verdict must be upheld if it is supported by a "minimum quantity of evidence from which a jury might reasonably [decline to] afford relief." Ford Motor Co. v. Summit Motor Prods., Inc., 930 F.2d 277, 290 (3d Cir. 1991).

The jury’s $10,000 award was not against the substantial weight of the evidence. Star had the burden of proving the amount of its damages at trial. The jurors evaluated the credibility and weight of the parties’ evidence, and made their findings accordingly. Given Star’s relative lack of success in marketing Hartman foamboard during the first Agreement period, a $10,000 jury award for total breach does not strike the court as a miscarriage of justice or shocking to the conscience. Another

factfinder may have arrived at a different award amount. However, “[t]he mere fact that neither the plaintiff nor the Court has been able to mathematically deduce how the jury arrived a such a figure does not mandate that the jury's verdict should be overturned or a new trial awarded by this Court.” New Market Invest. Corp., 774 F. Supp. at 917.

Star’s alternative motion for a new trial on damages is therefore denied.

III. Conclusion

For the foregoing reasons, Star’s motion to alter or amend the judgment, or alternatively for a new trial on the issue of damages, is denied.